

**REDEVELOPER AGREEMENT FOR
WEST MAPLE AVENUE REDEVELOPMENT AREA,
MERCHANTVILLE, NJ**

THIS REDEVELOPMENT AGREEMENT ("Agreement") is made and entered into effective as of the _____ day of September, 2011, by and between **CITADEL WELLWOOD, L.L.C.**, a New Jersey limited liability company, having its principal office at 201 Union Lane, Brielle, New Jersey 08730 (hereinafter designated as the "Redeveloper"), and the **BOROUGH OF MERCHANTVILLE**, a municipal corporation of the State of New Jersey, having offices at 1 West Maple Avenue, Merchantville, New Jersey 08109 (hereinafter designated as the "Borough").

PREAMBLE

WHEREAS, pursuant to the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et. seq. ("Local Redevelopment and Housing Law"), set forth at N.J.S.A. 40A:12A-6(a), the Borough Council of the Borough of Merchantville ("Borough Council") directed the Planning Board of the Borough of Merchantville, ("Planning Board") to conduct a preliminary investigation to determine whether an area comprising the West Maple Avenue Redevelopment Zone, known and designated as Lots 2, 3 and 4 in Block 9 on the Official Tax Maps of the Borough ("West Maple Avenue Project Area") is a redevelopment area in accordance with the criteria set forth in the Local Redevelopment and Housing Law; and

WHEREAS, the Planning Board conducted a preliminary investigation in accordance with the guidelines set forth in the Local Redevelopment and Housing Law at N.J.S.A. 40A:12A-6, and held a public hearing on this matter on April 26, 2011; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-6, the Borough determined that the West Maple Avenue Project Area is an area in need of redevelopment, such lands being more particularly described by metes and bounds and depicted on the aforesaid Official Tax Maps both of which are attached hereto as Exhibit A and made a part hereof; and

WHEREAS, by Ordinance No. 11-05, the Borough Council adopted, on June 13, 2011, the Redevelopment Plan for Block 9, Lots 2, 3 and 4, in the Borough of Merchantville, County of Camden and State of New Jersey ("Redevelopment Plan") a copy of which is attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the Redevelopment Plan calls for the historic restoration of the multi-family building located at 606 West Maple Avenue and the development of parking areas at the rear portion of Block 9, Lot 4 permitted under the Redevelopment Plan ("Improvements"); and

WHEREAS, the Redeveloper has agreed, except as otherwise provided herein, to redevelop all parcels within the West Maple Avenue Project Area as a fifty-four (54) unit residential facility as shown on plans entitled Wellwood Manor; and

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-8(f) authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, the Borough and the Redeveloper (collectively, the "Parties") have engaged in further negotiations and the Borough Council has determined that it is in the best interests of the Borough to enter into this Agreement with the Redeveloper for the construction of the improvements outlined herein within the West Maple Avenue Project Area pursuant to the provisions of the Redevelopment Plan; and

WHEREAS, the Borough Council has designated the Redeveloper as the redeveloper to undertake the necessary work to construct the Improvements within the Redevelopment Area ("Redevelopment Project");

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and further, to implement the purposes of the Local Redevelopment and Housing Law and the Redevelopment Plan, the Parties hereto agree as follows:

1. **Borough Responsibilities.**

a. Title. The Redeveloper shall make his best efforts to privately acquire title to Block 9, Lots 2, 3 and 4, in the Borough of Merchantville, County of Camden and State of New Jersey, the properties which comprise the West Maple Avenue Project Area. Upon the execution of this Agreement, the Borough shall commence eminent domain proceedings to acquire Block 9, Lots 2 and 3, or the properties specifically requested by the Redeveloper, which comprise the West Maple Avenue Project Area, of which the Redeveloper has been unsuccessful in acquiring by private negotiation. Upon the request of the Redeveloper, the Borough shall commence the eminent domain proceedings to acquire Lot 4 or a portion of Lot 4 designated by the Redeveloper within six (6) months of the Redeveloper's request to the Borough. The Redeveloper shall have the right but not the obligation to acquire all property located in the Redevelopment Zone. In such event, the Redeveloper shall establish an escrow account with the Borough for the funding of all out-of-pocket costs incurred by the Borough in connection with this project ("Redevelopment Escrow Account"). The Redeveloper shall deposit into the Redevelopment Escrow Account the amount of Twenty Thousand Dollars (\$20,000.00) within ten (10) business days of the execution of this Agreement. . The Borough shall provide the

Redeveloper with invoices setting forth all costs incurred by the Borough related to the condemnation that will be drawn down at least five (5) days prior to the date of each such draw. The Redeveloper shall have the opportunity to object to the reasonableness of charges submitted for payment within the said five-day period. Within five (5) days of the receipt by Redeveloper of written notice from the Borough that the amount in the Redevelopment Escrow Account has decreased to \$5,000.00, the Redeveloper shall replenish the Redevelopment Escrow Account to the amount of \$20,000.00. If the costs incurred by the Borough exceed the amount in the Redevelopment Escrow Account for a period of thirty (30) days, the Redeveloper shall pay all such costs over and above the amount in the Redevelopment Escrow Account upon ten (10) days written notice from the Borough that such costs are due.

b. Commencement of Condemnation Action. Within ten (10) days of the execution of an Order by a Judge of the Superior Court that the Borough is duly authorized to acquire title to the properties requested by the Redeveloper by the Borough's power of eminent domain, Redeveloper shall deposit to the established escrow account with the Borough funds in the amount sufficient for the Borough to file and record the Declaration of Taking with the Superior Court and with the Clerk of the County of Camden and to deposit funds with the Clerk of the Superior Court which are alleged by the Borough to be the fair market value of the properties which have been requested by the Redeveloper to be subject to condemnation. Failure by the Redeveloper to deposit the aforesaid funds necessary for the perfection of the acquisition of the properties which have been requested by the Redeveloper to be subject to condemnation within this ten (10) day period shall constitute a material breach of this Agreement.

c. Maximum Time For Condemnation. In the event that the Borough cannot acquire title to the parcels within the West Maple Avenue Redevelopment Area free from any judicial challenge to the Borough's authority to acquire such property pursuant to its power of

eminent domain within three (3) months following the request of the Redeveloper for the commencement of eminent domain proceedings to acquire all or some of the properties comprising the West Maple Avenue Project Area, then the Redeveloper may request that the Borough shall cease all further activity with respect to obtaining such lands, either through condemnation or through negotiation with the owner(s) of such remaining lands. In such event, the Redeveloper shall reimburse the Borough for all costs and expenses incurred up to and including the date on which the Borough shall cease all activities respecting property acquisition as provided in this subsection.

d. Sale of West Maple Avenue Project Area to Redeveloper. The Borough shall convey to the Redeveloper a fee simple interest in any properties comprising the West Maple Avenue Project Area, which the Redeveloper does not already own, along with the existing improvements located on all such properties, for an aggregate amount equal to the “Project Costs” defined herein, in accordance with the specific terms set forth herein, as soon as practical after the filing and recording by the Borough of the Declaration of Taking with the Superior Court and with the Clerk of the County of Camden and the depositing of funds with the Clerk of the Superior Court which are alleged by the Borough to be the fair market value of the properties which have been requested by the Redeveloper to be subject to condemnation. The fact that the Redeveloper will acquire fee simple title to the properties requested to be obtained by the Redeveloper within the West Maple Avenue Project Area not already owned by the Redeveloper will not excuse the performance of any of the obligations of the Redeveloper or the Borough in relation to the Redevelopment Project as set forth in this Agreement.

e. Agreement for Sale of Certain Properties within West Maple Avenue Project Area. The Parties agree the specific parcels comprising the West Maple Avenue Project Area, which the Redeveloper does not already own, may be conveyed, upon the request of the

Redeveloper as follows: by the Borough to Redeveloper under the terms of a Purchase and Sale Agreement, dated September , 2011 to be attached hereto as Exhibit C.

2. **Project Costs.** The Parties acknowledge that there will be various costs associated with the Project, which shall include the following (“Project Costs”):

 a the final, unappealable, award or price paid or to be paid to the property owner(s) of each parcel making up the West Maple Avenue Project Area not already owned by the Redeveloper, which shall be the just compensation value determined by the condemnation process either in bona fide negotiations with the said property owner(s) or as a result of the proceedings before the condemnation commissioners or the court;

 b. costs associated with the investigation and remediation of all environmental conditions in the West Maple Avenue Project Area necessary for the redevelopment and approval of all applicable regulatory agencies;

 c. costs and fees incurred in complying with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“Redevelopment Law”) and the Eminent Domain Law, N.J.S.A. 20:30-1 et. seq. (“Eminent Domain Law”) including, but not limited to, professional services, expert fees, inspections, appraisals, environmental investigations, the costs associated with the relocation of existing tenants under the N.J.S.A. 20:4-1 (“Relocation Assistance Act”), court deposits and court costs and fees associated with bona-fide negotiations, commissioner hearings, court proceedings and challenges to property acquisitions excluding any costs incurred by the Borough in designating the area as a Redevelopment Zone,; and

 d. any and all other outstanding costs and expenses incurred by the Borough relative to the property located at 606 West Maple Avenue, specifically any and all fines, relocation expenses, municipal liens and other outstanding fines and/or costs incurred by the Borough, determined to be the sum of \$60,000, during the time period in said property was

owned and/or controlled by Shaukat Malik personally and/or Malik and Son, LLC, which shall also include, but not be limited to, all fees and costs of professional legal, technical or financial consultant, contractor or vendor costs. Upon payment of these costs and expenses by the redeveloper, the Borough specifically grants to the Redeveloper any and all rights which the Borough would have against Shaukat Malik personally and/or Malik and Son, LLC, for the recoupment of these costs and expenses incurred by the Borough relative to the property located at 606 West Maple Avenue. This amount shall be paid to the Borough on the date that the Redeveloper shall acquire title to Block 9, Lots 2 and 3 through either private negotiations or eminent domain proceedings as set forth in Paragraph 1(a) ; and

e. any other reasonable and appropriate out-of-pocket expenses which are associated with the Redevelopment Project, which shall include, but not be limited to all fees and costs of professional legal, technical or financial consultant, contractor or vendor necessary for the Project.

3. **Redeveloper Responsibilities.** The Redeveloper agrees to construct the Improvements in accordance with the Redevelopment Plan and according to the site plan approval and other relief, if any, granted by the Planning Board, as memorialized by Resolution. Presently, the Redeveloper's proposal consists of fifty-four (54) residential rental units which are more particularly shown on the aforesaid drawing prepared by an engineer/architect selected by the Redeveloper, attached hereto as Exhibit D. The scope of work shall include, but not be limited to, new kitchen cabinets, sinks and faucets, new 24' gas stove, new hot water heaters, new hot and cold water risers, new waste connections, new electric service for each apartment, new toilets, sink base, drywall repair, painting, restoration of wood flooring, intercom system, entry doors, roof repairs, landscaping window replacement and masonry repairs. Said work shall

be completed consistent with the standards set forth in all applicable state, county and municipal building, fire and property maintenance codes.

a. Use of Subcontractors. The Redeveloper will use its best judgment to engage reputable contractors to construct the Improvements. By way of example, and not by way of limitation, the Redeveloper may hire carpenters, electricians, heating and air conditioning specialists, plumbers, masons, painters and general contractors. Each contractor must be licensed with the State of New Jersey as required by law. In addition, each contractor must guarantee the quality of their workmanship for a period of time that is standard in the particular industry. In addition, each contractor must have liability insurance in full force and effect in amounts that are standard in the particular industry. The Redeveloper shall use its reasonable discretion to determine guarantees and liability insurance that are standard to a particular profession.

b. Reimbursement of Borough's Professional Expenses. Pursuant to N.J.S.A. 40A:12A-8(f), the Redeveloper shall post monies with the Borough, which shall be placed in the Redevelopment Escrow Account, to pay for the Borough's legal fees and expenses for general consultation necessary to accomplish the Redevelopment Plan, for negotiation and preparation of all documents necessary to implement the Redevelopment Plan and for all litigation costs and expenses contemplated under this Agreement.

c. Timing of the Project. The Redevelopment Project shall commence as soon as title to the remaining parcels within the West Maple Avenue Project Area are delivered to Redeveloper and will be substantially completed within three hundred sixty (360) days of the Redeveloper's receipt of preliminary and final site plan approval granted by the Planning Board.

d. General Development Requirements.

1) Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, construction and operation of the Redevelopment Project and each of the components thereof, including, without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Redevelopment Project and each component thereof, arrangements for interim and final inspections and any other actions required to satisfy the requirements of any applicable Permits and Approvals, as hereinafter defined, (all of the foregoing undertakings and the work product thereof being referred to collectively in this Agreement as the "Work"), the administration, operation and management, or contracting for the administration, operation and management of the Redevelopment Project and all components of the Redevelopment Project and all aspects of the funding of the Redevelopment Project, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

2) Standards of Construction. Without limitation, all work on the Redevelopment Project shall be performed in a good and workmanlike manner, with quality materials called for under the applicable Final Plans and Specifications. All construction shall be in accordance with the Uniform Construction Code codified at N.J.A.C. 5:23-1 et. seq., or as appropriate.

3) Compliance with Law. The Redevelopment Project and all work performed and materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all applicable laws.

4) Payment of Project Costs. The Redeveloper shall pay or cause to be paid when due all Project Costs, as hereinabove defined.

5) Environmental Remediation. Redeveloper shall be responsible for any and all environmental remediation necessary to redevelop the West Maple Avenue Project Area. Redeveloper shall be responsible to obtain all necessary environmental permits, including Letter(s) of No Further Action from the New Jersey Department of Environmental Protection.

e. Permits and Approvals. The Redeveloper, at its sole cost and expense, shall apply for and obtain all permits, licenses and approvals necessary for the Redevelopment Project, including, without limitation, preliminary and final site plan approval and utility relocation approvals (“Permits and Approvals”). The Redeveloper shall pursue diligently all Permits and Approvals and shall complete construction of the Redevelopment Project within three hundred sixty (360) days after obtaining unappealable preliminary and final site plan approval from the Planning Board. The Borough may grant extensions of this time period in the event that the Redeveloper is delayed in receiving any other Permits and Approvals and for other significant factors. If the Redeveloper is unable to obtain all Permits and Approvals required to develop the West Maple Avenue Project Area in accordance with the Redevelopment Plan within one (1) year of the effective date of this Agreement, then the Redeveloper may terminate this Agreement, without penalty, and the Parties hereto shall have no further obligations hereunder, except any provisions herein which shall survive any such termination and the Redeveloper’s obligation to reimburse the Borough for any costs incurred by the Borough prior to the date of termination. If the Redeveloper fails to obtain all Permits and Approvals required to develop the West Maple Avenue Project Area in accordance with the Redevelopment Plan or, in the judgment of the Borough, or fails to diligently pursue all Permits and Approvals and the completion of construction of the Redevelopment Project, the Borough shall be afforded all

rights under New Jersey law to, in its discretion, seek specific performance of the terms and conditions of this Agreement, or terminate this Agreement, with the Redeveloper being obligated to reimburse the Borough for any costs incurred by the Borough prior to the date of termination.

f. Certificate of Completion. The Project shall be deemed to be complete and a certificate of completion (“Certificate of Completion”) shall be issued by the Borough at such time as the Redeveloper has performed the Redevelopment Project as shown or otherwise described in the Planning Board resolution granting preliminary and final site plan approvals and other relief, if any, and the redevelopment project specifications (“Redevelopment Project Specifications”), both of which are attached hereto as Exhibit D and made a part hereof. Upon completion of the Redevelopment Project, and upon the request of the Redeveloper, the Borough agrees to issue a Certificate of Completion in form and content satisfactory to counsel for the Redeveloper and in proper form for recording, which shall acknowledge and confirm that the Redeveloper has completed performance of all of its duties and obligations under this Agreement and all other agreements referred to herein and/or annexed hereto, and shall authorize and consent to the Redeveloper’s sale, lease, transfer or other disposition of all property within the West Maple Avenue Project Area. Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement, including, but not limited to, the agreements and covenants set forth in Section 3 hereof. The Certificate of Completion shall further constitute a conclusive determination that the conditions determined to exist at the time the West Maple Avenue Project Area was designated as an area in need of redevelopment shall no longer exist and the West Maple Avenue Project Area shall no longer be subject to eminent domain as a result of such determinations. In the event that the Borough shall fail or refuse to provide such Certificate of Completion within thirty (30) days

after written request by Redeveloper, the Borough shall provide the Redeveloper with a written statement setting forth in detail (a) the aspects of the Redevelopment Project, which it believes that the Redeveloper has failed to complete in accordance with the provisions of this Agreement, or which are otherwise in default under this Agreement or any other applicable agreement and (2) the measures or acts that will be necessary in the opinion of the Borough in order for the Redeveloper to be entitled to such Certificate of Completion.

4. **Covenants and Restrictions.**

a. The covenants to be imposed upon the Redeveloper, its successors and assigns, pursuant to this Agreement, and in accordance with N.J.S.A. 40A:12A-9, shall include, without limitation, the following:

1. To construct and/or operate on the West Maple Avenue Project Area only those uses that are permitted in the Redevelopment Plan;

2. To begin work on the Redevelopment Project, as soon as title to the remaining parcels in the West Maple Avenue Project Area, which are not already owned by the Redeveloper, are delivered to the Redeveloper by the Borough and complete same within 360 days after obtaining unappealable preliminary and final site plan approval and other relief, if any, from the Planning Board, all such time periods being subject to reasonable extensions by the Borough; and

3. To refrain from selling, leasing or otherwise transferring any lots within the West Maple Avenue Project Area until the Borough has issued a Certificate of Completion, except that the Redeveloper may dispose of property within the West Maple Avenue Project Area prior to the issuance of a Certificate of Completion if the Borough consents in writing. Furthermore, nothing contained in this Agreement shall prohibit the Redeveloper from marketing the Redevelopment Project or from entering into a contract of sale, lease or other

agreement for the disposition of property within the West Maple Avenue Project Area at any time, provided that the Redeveloper includes in any such contract or agreement a provision making the sale, lease or other disposition of property within the West Maple Avenue Project Area contingent upon the Redeveloper's satisfactory completion of the Redevelopment Project.

b. The covenants and restrictions imposed upon the Redeveloper, its successors and assigns, pursuant to this Agreement, shall be deemed satisfied and/or of no further force and effect and this Agreement shall terminate upon the issuance of the Certificate of Completion.

5. **Conditions Precedent to Borough and Redeveloper Responsibilities.**

As a condition precedent to the obligations of the Borough and the Redeveloper set forth in this Agreement, the Borough shall commence, within ten (10) business days of the request of the Redeveloper, eminent domain proceedings as contemplated under the agreements incorporated under Section 1 of this Agreement, pursuant to the Eminent Domain Act, N.J.S.A. 20:3-1 et seq. on the explicit condition that the law allows such action and the Redeveloper has complied with all conditions of the incorporated agreements. As part of such eminent domain proceeding, the Borough shall make application to the Superior Court for utilization of valuation proceeds for environmental remediation at each of the properties comprising the West Maple Avenue Project Area, which the Redeveloper does not already own.

6. **Assignment of Rights**

Neither party to this Agreement may assign its rights hereunder to another person or entity without the prior written consent of the other party.

7. **Events of Default.**

(a) The Redeveloper shall be deemed in default of its obligations under this Agreement upon the occurrence of one or more of the following events:

1. The Redeveloper fails to pay the Project Costs as required herein.

2. The Redeveloper fails to perform any of its obligations hereunder, including proceeding to closing of title on any of the parcels comprising the West Maple Avenue Project Area once all of the contingencies have been satisfied for any such parcels and the Redeveloper directs the Borough to commence eminent domain proceedings with respect thereto.

(b) The Borough shall be deemed in default of its obligations under this Agreement upon the Borough's failure to perform any of its obligations hereunder, including, without limitation, applying for funding for environmental investigation or remediation, *if applicable*.

(c) The Parties agree that if the Redeveloper defaults on its obligations in this Agreement, the Borough's sole remedy is to be reimbursed for out-of-pocket expenses. The Parties agree that if the Redeveloper breaches its obligations under this Agreement, the damages suffered by the Borough will be considerable. However, the Parties agree that the value of the damages will be difficult, if not impossible, to determine.

(d) The Parties agree that if the Borough defaults on its obligations in this Agreement, the Redeveloper's remedy is to seek specific performance and/or to be reimbursed for out-of-pocket expenses.

(e) If either party defaults on its obligations in this Agreement, the party that defaults shall reimburse the other party for all Project Costs incurred prior to the date of default. For purposes of this provision only, Project Costs, as defined under this Agreement shall apply to both Parties.

(f) Except as otherwise provided in this Agreement, in the event of default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, such party

shall, upon written notice from the other party, proceed immediately to cure or remedy such default or breach within thirty (30) days after receipt of such notice.

8. Warranties And Representations.

a. The Redeveloper's Representations, Warranties and Covenants. The Redeveloper hereby represents and warrants to, and covenants with, the Borough that:

1) Organization. The Redeveloper has all requisite power and authority to enter into this Agreement.

2) Authorization; No Violation. The execution, delivery and performance by the Redeveloper of this Agreement have been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of the Redeveloper or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which the Redeveloper is a party or by which the Redeveloper or its material assets may be bound or affected.

3) Valid and Binding Obligations. The person executing this Agreement on behalf of the Redeveloper has been duly authorized and empowered and this Agreement has been duly executed and delivered by the Redeveloper and constitutes the valid and binding obligation of the Redeveloper.

4) Litigation. No suit is pending against or affects the Redeveloper which could have a material adverse effect upon the Redeveloper's performance under this Agreement or the financial condition or business of the Redeveloper. There are no outstanding judgments against the Redeveloper that would have a material adverse affect upon the assets or properties of the Redeveloper or which would materially impair or limit the ability of the Redeveloper to enter into or carry out the transactions contemplated by this Agreement.

5) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Redeveloper is a party or is otherwise subject.

6) No Violations of Laws. The Redeveloper has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Redeveloper with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or of any other state or municipality or agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement. The Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority that is in any respect material to the transactions contemplated hereby.

7) Qualifications of the Redeveloper and Contractors. The Redeveloper and each of its consultants, subcontractors, affiliates and agents is and will be fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in or contemplated under this Agreement and that it and they are and will be properly equipped, organized and financed to perform all such work and undertake all such responsibilities hereunder and under the agreements attached hereto and incorporated herein.

b. The Borough's Representations, Warranties and Covenants. The Borough hereby represents and warrants to, and covenants with, the Redeveloper that:

1) Organization. The Borough is a public body politic of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement.

2) Authorization; No Violation. The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough and will not violate the statutes, rules and regulations establishing the Borough and governing its

activities, have been duly authorized by all necessary government action and will not result in the breach of any material agreement to which the Borough is a party and/or, to the best of the Borough's knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

3) Valid and Binding Obligations. The person executing this Agreement on behalf of the Borough has been duly authorized and empowered and this Agreement has been duly executed and delivered by the Borough and constitutes the valid and binding obligation of the Borough.

4) Litigation. No suit is pending or affects the Borough that could have a material adverse effect upon the Borough's performance under this Agreement or the financial condition or business of the Borough. There are no outstanding judgments against the Borough that would have a material adverse affect upon the assets or properties of the Borough or which would materially impair or limit the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

5) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

6) No Violation of Laws. The Borough has received no notice as of the date of this Agreement asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, which is in any respect material to the transactions contemplated hereby.

9. **Representatives.**

a. The Redeveloper's Project Executive and Project Manager. Upon execution of this Agreement, the Redeveloper shall designate in writing to the Borough the name of the individual who is the "Project Executive" with full authority to execute any and all instruments, documents or notices requiring the Redeveloper's signature and to act on behalf of the Redeveloper with respect to all matters arising out of this Agreement and with respect to the Redevelopment Project and the Borough shall be entitled to rely and shall be fully protected in relying upon any instrument, document or notice signed or action taken by the Project Executive, unless and until it receives notice in writing from the Redeveloper of the termination of the Project Executive's authority. Notwithstanding the foregoing, the Redeveloper shall provide to the Borough from time to time upon request, evidence, such as, without limitation, clerk's or manager's certificates, members and stockholders resolutions and the like, of the authority of the Project Executive generally or with respect to any particular signature or action. The Redeveloper may also designate an individual who shall act as the "Project Manager". The Project Manager shall act as liaison and contact person between the Redeveloper and the Borough and shall represent the interests of the Redeveloper on the Redevelopment Project, be responsible for overseeing all aspects of design, construction and development of the Redevelopment Project, and work closely with the Borough on behalf of the Redeveloper. In the absence of a designated Project Manager, the Project Executive shall perform the function of Project Manager. The Project Executive and/or the Project Manager shall respond to and make themselves available for consultation with the Borough with respect to all questions, requests or comments relating to the Redevelopment Project and its development, implementation and operations.

b. The Borough's Representative. Upon execution of this Agreement, the Borough shall designate in writing to the Redeveloper the name of an individual who is the "Borough's Representative" who shall act as liaison and contact person between the Redeveloper and the Borough in administering and implementing the terms of this Agreement. The Redeveloper shall submit all requests for consent or review of matters which require consent or review by the Borough, and all materials to be submitted in connection therewith to the Borough representative, who shall either consent or obtain the Borough's consent (as to matters requiring consent) or review or cause to be reviewed and respond to any matter requiring the Borough review and response. The Redeveloper and any person dealing with the Borough in connection with any consent or review required or requested under this Agreement and any amendment(s) thereto may rely and shall be fully protected in relying upon the authority of the Borough's Representative to act for the Borough in such regard and/or with respect to the Redevelopment Project, except that the release of any security instrument held by the Borough hereunder shall require the signature of the Executive Director of the Borough.

c. Change of Representative. From time to time following the execution hereof, the Redeveloper may terminate and replace the Project Executive or terminate or replace Project Manager, and the Borough may change or replace the Borough representative, upon five (5) Business Days' written notice to the other Party, delivered to such Party in the manner and at the address indicated in Section 10 hereof.

10. **Notices And Demands.**

A notice, demand or other communication under this Agreement by any party to the other party shall be deemed to have been sufficiently given if (1) dispatched by United States registered or certified Mail, postage prepaid and return receipt requested, (2) delivered by national overnight courier with delivery confirmation, such as Federal Express or Express Mail,

(3) remitted by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number) or (4) delivered personally (with written acknowledgment of receipt by the individual named in the "attention line" of the address hereinafter set forth) to the party being served notice at such party's address (or facsimile number, as the case may be) set forth as follows:

If to the Borough, to:

Denise Brouse, Borough Clerk
Borough of Merchantville
1 West Maple Avenue
Merchantville, New Jersey 08109

cc: Timothy J. Higgins, Esquire
Law Offices of Timothy J. Higgins
1040 North Kings Highway – Suite 300
Cherry Hill, New Jersey 08034

If to the Redeveloper, to:

Mr. Richard DePetro
Citadel Wellwood, LLC
201 Union Lane
Brielle, New Jersey 08730

cc: [Paul V. Fernicola, Esq.
Paul V. Fernicola & Associates, LLC
219 Broad Street
Red Bank, New Jersey 07701

11. **Miscellaneous**

a. **Mitigation.** The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

b. **Non-Liability of Officials and Employees of Redeveloper.** No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the

Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

c. Non-Liability of Officials and Employees of the Borough. No elected or appointed official of the Borough, including, but not limited to, the Mayor, member of Borough Council, member of the Planning Board, member of the Historic Preservation Commission, Borough Clerk, Borough Solicitor, Planning Board Solicitor, Historic Preservation Commission Solicitor, Borough Chief Financial Officer, and/or any and all other Borough employees or appointees shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough or for any amount which may become due to the Redeveloper, or its successor, on any obligation under the terms of this Redevelopment Agreement.

d. Estoppel Certificate. Within thirty (30) days following receipt of a written request therefor by a party hereto, the party receiving such request shall issue a signed estoppel certificate stating either (1) that this Agreement is in full force and effect and that there is no default or breach thereunder (nor any event which, with the passage of time and/or the giving of notice would result in a default or breach under the Agreement), or (2), if in the opinion of the party issuing the estoppel certificate there is a default, the nature of such alleged default or breach. In the event the estoppel certificate alleges a default or breach, it shall also state the manner in which such default or breach may be cured. Each party may request a reasonable number of estoppel certificates during each calendar year that this Agreement shall remain in effect.

e. No Brokerage Commissions. The Parties each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent, or otherwise acting on behalf of either of the Parties. The Parties shall indemnify

each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

f. Titles of Articles and Sections. The titles of the several articles and sections of this Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

g. Reciprocal Indemnification. Each party hereto shall indemnify and hold harmless the other from and against all liability, claims or costs, including reasonable attorneys' fees, which arise(s) out of or result(s) from any injury to person or damage to property incurred on the parcels comprising the West Maple Avenue Project Area caused by such party's own acts or omissions.

h. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, riots, insurrection, war, restrictive governmental laws or regulations, acts of God, such as extended periods of inclement weather, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the time allowed for such performance of such act shall be appropriately extended. The Parties recognize, however, that this provision shall not serve to extend any specific time periods mentioned herein after which either party, as appropriate, may terminate this Agreement.

i. Negation of Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

j. Amendment; Waiver. No alteration, amendment or modification hereof shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement. The failure of the Borough or the Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or by the Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Redeveloper or the Borough, as the case may be.

k. Consents. Unless otherwise specifically provided herein, no consent or approval by the Borough or by the Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an appropriate representative designated in accordance with Section 9 of the party by or on whose behalf such consent is given. Notwithstanding anything contained herein to the contrary, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld or delayed.

l. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without giving effect to any principal of choice of laws, and any actions arising from this Agreement shall be commenced and prosecuted in a court of the State of New Jersey.

m. Statutory and Code References. References in this Agreement to any provision of the New Jersey Statutes Annotated (N.J.S.A.), the New Jersey Administrative Code

(N.J.A.C.) and any other reference to the provisions of any compilation of laws, ordinances, statutes, rules or regulations having the force and effect of law shall include all amendments and re-codification to which such provision(s) may be subject from time to time.

n. Severability. If any article, section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

o. Binding Effect. Except as may otherwise be provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of the Redeveloper, the Borough and their respective permitted successors and assigns.

p. Implementation of Agreement and Redevelopment Plan. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates and consents in order to satisfy the terms and conditions of this Agreement and the Redevelopment Project. The Borough further agrees to take such action as may be reasonably requested by any lender of Redeveloper in connection with obtaining financing or otherwise accomplishing the purposes of the Redevelopment Project, provided, however, that the reasonable cost of such action shall be borne by the Redeveloper.

q. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of

principal and agent, partnership, joint venture or any association between the Redeveloper and the Borough, their relationship being solely as contracting parties under this Agreement.

r. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

s. Date of this Agreement. As used in this Agreement, the terms "date of this Agreement", "date hereof" and words of similar import shall mean and refer to the date set forth in the first paragraph of the text of this Agreement.

t. Prior Agreements Superseded. This Agreement supersedes any prior understanding or written or oral agreements between the Parties respecting the within subject matter. Except as aforesaid, this Agreement, together with any other documents executed by the Parties contemporaneously herewith contains the entire understanding between the Parties with respect to the Redevelopment Project.

u. Litigation of Disputes. Except as otherwise provided in this Agreement, any dispute arising between the Parties under the terms of this Agreement (including any assertion that a Default has occurred) shall be resolved by suit in the courts of the State of New Jersey. Unless otherwise agreed to in writing, the Parties shall continue to perform their respective obligations under this Agreement during the pendency of any such suit.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be properly executed and their corporate seals (where applicable) affixed and attested to as of the day and year first above written.

ATTEST:

CITADEL WELLWOOD, LLC

_____ **By:** _____
Richard DePetro, Managing Member

Dated: _____

ATTEST:

THE BOROUGH OF MERCHANTVILLE

_____ **By:** _____
Denise Brouse, Borough Clerk **Frank M. North, Mayor**

Dated: _____

EXHIBITS

- Exhibit A - Legal Description and Official Tax Maps
- Exhibit B - Redevelopment Plan
- Exhibit C - Purchase and Sale Agreement, dated _____
- Exhibit D - Redeveloper's Scope of Work